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Florida International University

January 26, 1993

Ms. Donna Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

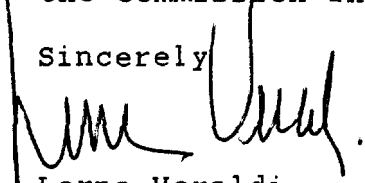
VIA FEDERAL EXPRESS

Re: Rulemaking Comments
MM Docket No. 92-266

Dear Ms. Searcy

Enclosed for filing are an original and nine copies of my
Comments in the Cable Television Rulemaking presently before
the Commission in MM Docket No. 92-266.

Sincerely


Lorna Veraldi
Assistant Professor

Encls (10)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC MAIL ROOM

In the Matter of)
)
Implementation of Sections of) MM Docket No. 92-266
the Cable Television Consumer)
Protection and Competition Act)
of 1992)
)
Rate Regulation)

COMMENTS

1. Lorna Veraldi, Assistant Professor, School of Journalism and Mass Communication, Florida International University, hereby submits comments in the above-referenced rulemaking concerning implementation of rate regulation pursuant to the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992").

2. The Commission, in its Notice of Proposed Rulemaking, seeks comment on implementation of the requirement under the Cable Act of 1992 that a cable operator have a uniform rate structure throughout the geographic area it serves.¹ The Commission, in its Notice, has asked for information concerning the extent to which cable operators currently offer discounts to some customers.

¹ Communications Act Sec. 623(d), 47 U.S.C. Sec. 543(d).

Bulk Contract Discounts

3. In Florida, one of cable's most controversial and questionable discounts is the "bulk contract" discount offered to condominium and homeowner associations. Condo associations control common areas in many residential towers and similar structures where individuals own the interiors of their units and are part of a condo association that owns both common grounds and building exteriors. By contrast, homeowner associations are set up even where individuals own their lots and their residential units, but common amenities, like pools and streets, must be maintained and property covenants enforced.

4. Bulk contracts work like this: Boards of directors are elected by their fellow condo or home owners to manage and operate common areas and to assess and collect maintenance fees to pay for common expenses. They have the power to slap liens on the homes of owners who don't pay. Cable television companies offer monthly service at a discount if boards will order basic cable television for everyone in the association and pay for cable as a "common expense."

5. Bulk contracts at a discount look like a good deal to many board members, the majority of whom (like the majority of Americans) already subscribe to cable at full price. To many homeowners, it doesn't hurt as much to pay for cable if it's hidden in their monthly association

maintenance fee. It feels as if they're getting cable for free.

6. What's wrong with bulk contracts? For one thing, owners who don't want cable say bulk contracts invade their privacy and property rights. After all, cable television isn't like lawn care. It benefits individual homes, not common areas. And, unlike a tennis court or a big swimming pool, cable television has been and would be available at an affordable cost to individuals who wished to subscribe. Could the board order everyone to subscribe to the daily paper or buy groceries from the same supermarket just to get a group discount? Probably not. But cable television service is on the borderline, maybe because cable wires cross common property or because some associations provide a master television antenna service wired to individual homes.

Bulk Contracts and Competition

7. Bulk cable contracts not only trample on the rights of individuals, but also on cable's competition. Competing cable systems, satellite dish sellers, MMDS, DBS and other information and entertainment providers have a hard enough time getting started when a development is already wired for cable under an exclusive local franchise. Once a homeowners' association has agreed to sign up everybody and to collect the cable company's monthly bills for it, what chance is there for competitors ever to crack that market?

8. Every owner must pay for cable, so he has little

incentive or budget to explore other options. Even if an individual owner is fed up with cable service or prices, he can't walk away from cable unless a majority of his neighbors walk with him. But statistics show that a majority of owners would subscribe to cable even without a discount.

9. Bulk contracts may look like a good deal, but they're really a trap. Subscribers may get a price break, at least in the beginning. But at what cost? No matter how badly the cable operator performs, or how much he raises his rates down the road, consumers will have no opportunity to vote with their feet or their pocketbooks. There will be no competition.

10. Even regulated utilities don't have the power to force service on consumers against their will. Yet unregulated cable can use bulk contracts to insure monopoly power for all time. Come to think of it, why else would a cable operator take a net loss by selling basic cable at half price in exchange for a small increase in penetration in a development that has been wired for years?

The Golfwood Contract

11. A bulk contract with one Florida homeowners' association, the Golfwood I and II in North Dade County, is offered here as an example. The Golfwood townhomes were built in the late 1970s by a developer who sold individual units subject to property covenants to be enforced by a homeowners' association. The association would also be responsible for maintenance of common grounds and amenities

including two swimming pools.

12. Each owner has title to an attached one or two story home and the fenced lot surrounding that home. Each owner also is a member of the association with an easement to use the common grounds and an obligation to pay monthly assessments set by the board for various common expenses, including pool maintenance and security guard service. At one time, the association maintained a common television antenna system wired to each unit, but over the years it was abandoned. The antenna didn't work very well and many of the unit owners subscribed to cable anyway.

13. In the decade after the Golfwood was built, cable television service was available to any individual homeowner who wished to subscribe. Since each Golfwood home is a separate unit, connected to its neighbors by a party wall owned by the adjoining unit owners, each home had to be individually wired. There was no apparent reason why a cable operator needed to deal with the homeowners' association, except to bury wires in the common areas.

14. In 1990, there were two interesting developments at the Golfwood. Several unit owners received board approval to install backyard TVRO antennas disguised to resemble patio umbrellas. Within months of their installation, the Golfwood board was offered a bulk cable contract by Storer Cable (a copy of which is attached as Attachment A).

15. Individual owners, including many board members,

had been paying Storer about \$20 a month basic cable service. Under the terms of the bulk contract, Storer would offer a substantial (50%) discount and lock it in for two years if the Golfwood would buy cable for everyone and pay Storer a monthly fee of \$1140.00--or \$9.25 per each of the 120 Golfwood homes.

16. After the bulk contract went into effect in March 1991, Storer sent one monthly bill to the homeowners' association, which continued to collect monthly maintenance from individual homeowners. Because the Golfwood monthly assessment already included a healthy cushion, the homeowners association didn't even have to increase the monthly maintenance fee to pay for cable--so to many owners, cable went from being a monthly bill of \$20 or more to something that appeared to come "free." No longer could any individual owner elect not to subscribe, nor could any homeowner elect to cancel cable service.

17. Indeed, even the association, under the terms of Storer's bulk contract, is obligated to renew the contract after its initial term unless the board votes to give Storer six months notice that the Golfwood elects not to renew. The terms of the contract also give Storer the right, after the initial contract period, to raise its rates in any subsequent renewal period on five days prior notice.

18. Perhaps there was no connection between the installation of backyard satellite dishes at the Golfwood and Storer's offer of a 50% discount in exchange for 100% forced

subscription to its basic cable service. Because the initial contract has not yet gone into its first renewal period, it remains to be seen how big a discount Storer will continue to extend to the Golfwood now that it has missed its opportunity to cancel the bulk contract. What is clear is that no matter how poor Storer's service, how high its rates or how attractive its competition, Golfwood unit owners have no choice but to do as a majority of their board wishes. Storer is virtually assured that no future backyard dishes will spring up at the Golfwood while a majority of board members prefer to subscribe to cable.

Bulk Contracts under Florida Condo Law

19. Under recent amendments to the Florida condo law, condominium associations are authorized to enter into bulk contracts with cable operators. The condo law was amended, after heated debate, when Florida courts found bulk contracts a violation of condo unit owners' rights and cable companies threatened that without bulk contracts they could not afford to wire and service condo towers. Whether or not that is true, there seems little justification to allow bulk contracts in settings other than condo towers, where homes can be individually wired. In such situations, as at the Golfwood, bulk discounts appear on their face a form of predatory pricing--geared primarily to ensure cable operators monopoly power.

State Antitrust Laws and Bulk Discounts

20. States like Florida have powerful weapons they

might use against such anticompetitive practices. Florida's antitrust law, for example, parallels the Sherman Act, prohibiting all contracts that restrain trade. A contract forcing owners to buy services they don't want--and effectively prohibiting them from buying those they do--is an unreasonable restraint on the media marketplace. Cable companies typically have prospered with far less than total penetration of homes passed. And why must bulk contracts be all or nothing? If it is reasonable to offer a 50% discount for 100% penetration, why won't cable companies offer a smaller discount for 90% penetration or 80% penetration?

21. Florida's laws, much like the federal Robinson-Patman Act, prohibit predatory pricing. For example, Florida's "commercial discrimination" statute outlaws artificially low prices aimed at destroying competitors. The Florida law forbids selling products and--in contrast to the Robinson-Patman Act, services as well at different rates to different sections of a community unless discounts are based on actual savings in transportation costs or differences in quality. Under the law, a company guilty of commercial discrimination could lose its right to do business in Florida.

22. Cable operators might be able to show that they save enough money when penetration is high and churn low to justify some bulk discount. But do actual savings to the cable company really justify a 50% discount for a relatively small increase in subscribers in a development already wired

for cable? Or is the cable company taking a temporary loss under a bulk contract to crush upstart competitors? It is interesting to see bulk contracts offered for the first time to developments where cable has been available for years--but where satellite dishes have only recently sprung up.

23. If cable operators can provide cost figures that support bulk discounts, they should. An antitrust investigation would provide an appropriate forum to air the continuing cable rate controversy. However, so far neither the states nor the federal government has shown much inclination to initiate antitrust investigations where cable is concerned.

24. After cable rate deregulation in 1984, according to some critics, came a kind of "schizophrenic" attitude toward cable.² Cable, like any competitive industry, was allowed to set its rates with only the "marketplace" to control them. At the same time, neither federal nor

² Statement of Glenn B. Manishin, Attorney, Jenner & Block, Competitive Problems in the Cable Television Industry, Hearing before the Subcommittee on Antitrust, Monopolies and Business Rights of the Senate Committee on the Judiciary, 101st Cong., 1st Sess., 30 (1990). Manishin argued that Congress had only deregulated cable rates in 1984 because it "foresaw the possibility that new forms of television technology--the so-called alphabet soup of DBS, MMDS, SMATV, and the like--would arise to provide effective competition for cable systems." He felt that the FCC, in treating broadcast stations as "effective competition," had ignored its mandate under the 1984 statute. However, Manishin did not advocate rate reregulation. Instead, he argued that stronger antitrust law enforcement was in order if real cable competitors were ever to emerge: "Before we rush prematurely to turn cable systems into utilities, we should first give competition a chance to work by laying the antitrust groundwork making competition a realistic possibility." (Id.)

state authorities targeted cable for antitrust enforcement, because they considered it a natural monopoly.

25. Whether cable was in the past a natural monopoly is open to question. However, in the video marketplace that technological advances are now creating, cable could have formidable competitors. To the extent that government at all levels can encourage competition, the burdens of rate regulation both on government and on the industry can be significantly alleviated.

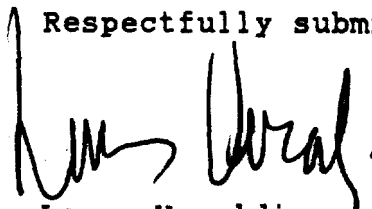
26. The Cable Act of 1992 gives the Commission an opportunity to eliminate unfair discounts that allow cable to price its competitors out of existence. Bulk discounts prevent any individual member of a homeowners' association from exercising video options, even if they exist. They are an effective and unjustified threat to competition that the Commission has a mandate, under the Cable Act of 1992, to eliminate.

27. The title and language of the Cable Act of 1992 set forth the dilemma faced by the Congress, the Commission, and state and local governments over the years as they have sought to address the issue of cable television rates. Ours is an economy in which marketplace solutions and competition are preferred over government price controls. Indeed, one argument used by cable systems to defend the rate increases that followed rate deregulation in 1984 is that local franchise authorities had tried to appease constituents by

keeping cable rates unrealistically low. Local voters were accustomed to "free television" and thus approached cable with a sense of entitlement. Local officials responded in franchise negotiations with an unrealistic sense of what television should cost. After deregulation, cable operators argue, rates simply rose to make up for years of heavy-handed suppression that prevented cable from realizing a reasonable rate of return and thus deprived consumers of the benefits of greater investment and development of cable services.

28. Prohibiting cable operators from discriminating in the rates they charge customers could go far to encourage the "effective competition" that the Cable Act recognizes is preferable to government rate regulation. Forbidding cable operators to offer bulk discounts absent convincing evidence that such discounts are the product of savings in the cost of service to affected areas could help cable competitors to emerge and to survive.

Respectfully submitted,



Lorna Veraldi
Assistant Professor
School of Journalism and Mass
Communication
Florida International University

January 26, 1993

North Miami Campus
Academic Building II,
130-A
North Miami, FL 33181
(305) 940-5523

ATTACHMENT A

BULK CABLE TELEVISION MULTIPLE - UNIT AGREEMENT

A 7175

341264-1

Amended 3/15
THIS AGREEMENT, made and entered into this _____ day of _____, 19____, by and between GOLFWOOD HOMEOWNERS ASSOCIATION I AND II, c/o SUNVEST, whose principal place of business is at 20500 SAN SIMON BLVD., MIAMI, FL 33179, its lawful successors and assigns (hereinafter "Owner"), and STORER CABLE TV OF FLORIDA, INC., a FLORIDA corporation, (hereinafter "Cable Company"), whose principal place of business is at 18601 N. W. 2 AVENUE, MIAMI, FL 33169.

WITNESSETH

WHEREAS, the Owner owns, operates and/or manages certain motel, hotel, condominium association, apartment or other multiple unit dwellings in DADE COUNTY as more fully set forth in Exhibit A to this Agreement (hereinafter referred to as the ("Property")); and

WHEREAS, the Cable Company is a _____ CORPORATION licensed to do business in the State of FLORIDA, which specializes in providing cable television services and cable television distribution systems; and

WHEREAS, the Owner and/or tenants, homeowners, occupants or residents of the Property desire cable television service from the Cable Company, ("Service"), and in addition, desire to have the equipment necessary for such Service installed, maintained and operated by the Cable Company; and

WHEREAS, the Cable Company desires to provide such Service and equipment installation, maintenance and operation.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

1. OBLIGATIONS OF THE CABLE COMPANY

The Cable Company agrees to:

- a. Subject to the availability thereof, and subject to any limitations in the Cable Company's agreements with the applicable programmers or program suppliers, provide the same basic and premium pay cable television signals which the Cable Company is generally providing other subscribers within its franchise area. Programming and other services contained on basic cable service are subject to change. Cable Company may from time to time rearrange, delete from, or otherwise offer programming contained on its basic cable service.
- b. Construct, install and maintain the necessary cable television equipment in a serviceable and working condition; provided, however, that the Cable Company shall not be held liable by the Owner for damage to underground cables and/or other facilities within any right-of-way appurtenant to or servicing the Property that are mislocated or not constructed or installed in accordance with national electric codes or local utility codes.

* 110 STATE ROAD 7, SUITE 100, MARGATE, FLORIDA 33068

- c. **Maintain public liability insurance covering the Cable Company's activities on the Property, in amounts of not less than \$500,000 for injury to any one person, \$500,000 aggregate for any single occurrence, and at least \$500,000 for property damage.**

2. OBLIGATIONS OF THE OWNER

The Owner agrees and warrants:

- a. **That it has full power and authority to execute and deliver all documents contemplated hereunder, and incorporated by reference herein, and to assure its full performance and compliance required hereunder.**
- b. **That the Cable Company shall have the exclusive right to supply Service to the Property throughout the term of this Agreement.**
- c. **That the Cable Company shall retain title to, and control of, the cable television distribution system installed under this Agreement. In the event of termination of this Agreement, whether by breach, default or expiration, the Cable Company may at its option, remove all or part of said cable television distribution system.**
- d. **To hold the Cable Company harmless from any damages caused by the Owner, its agents, its tenants or occupants, unless such damages shall result from the Cable Company's negligent installation or maintenance of any or all of the cable television equipment or distribution system.**
- e. **To grant and permit the Cable Company the right of free and unobstructed access to, entry upon and exit from the Property for the purpose of installing, operating, monitoring, maintaining, repairing, replacing, disconnecting and removing a cable television system. Such right shall be granted throughout each of the Properties listed in Exhibit A to this Agreement.**

3. COVENANTS FOR EXCLUSIVE USE

The Owner covenants with the Cable Company that:

- a. **The Owner shall not use nor permit the use of the cable television system installed by the Cable Company or its agents, or any part of such system for any purpose other than the transmission of the Cable Company's signal. In particular, but without limitation, the Cable Company's installed cable television system shall not carry signals from or become attached to a master antenna, individual outdoor antennas, antennas for reception of signals from satellites, other cable systems or operators, or any other means of providing television signal.**
- b. **The Owner agrees that the Services provided herein are for the private viewing only of its tenants, homeowners, occupants and residents.**

4. DURATION

This Agreement shall continue for a period of 2 years from the date first written above, or until the expiration of the Cable Company's relevant Franchise Agreement with DADE COUNTY, including any extension or renewals thereof; whichever comes first. This Agreement shall extend for additional periods of one (1) year each if neither party gives the other notice of termination at least six (6) months prior to the commencement of the respective one (1) year period.

5. COMPENSATION AND BILLING

- a. (Bulk Only) The Owner agrees to pay for the Services provided herein in accordance with the listed billing option more fully set forth in Exhibit B, which shall be completed by the parties and executed concurrently with the execution hereof, and which is incorporated herein by this reference.
- b. (Bulk Only) The Owner shall use reasonable best efforts to assist Cable Company in the installation or removal of Cable Company's equipment from the premises of Owner's tenants and warrants that it has full authority to permit entry by Cable Company to accomplish same. The Owner shall be responsible for all costs of collection, court costs and all reasonable attorney's fees incurred by the Cable Company in the event that collection is required hereunder or legal action is required to recover any equipment owned by the Cable Company.
- c. (Bulk Only) Payment shall be made to the Cable Company on a single billing each month, commencing with activation under this Agreement. The Owner agrees to render payment no later than the 5th day of the month. The Cable Company agrees to furnish the Owner with a monthly billing statement showing the service rendered to the Owner.
- d. (Bulk Only) Owner agrees that charges for the Services provided for herein may be, upon notice from the Cable Company, increased at the time of any subsequent extension or renewal of this Agreement.

6. SERVICE LOCATION

The Cable Company agrees to install, maintain and operate its cable television system(s) in accordance with the terms set forth herein at all locations agreed upon by the parties hereto and as more fully set forth in Exhibit A to this Agreement, which is incorporated by reference herein.

7. LEGAL STATUS

It is understood and agreed that no agency, employment, joint venture or partnership is created hereby or between the parties hereto; the Cable Company is not an affiliate of Owner; and that neither party, nor its agents or employees, shall be deemed to be an agent of the other; nor shall either party have the right, power or authority to act for the other in any manner to create obligations or debts which would be binding upon the other party.

8. RIGHT TO TERMINATE

- a. Prior to the end of the term of this Agreement, as set forth in Section 4 hereof, including any extensions or renewals, this Agreement may be terminated by:
 - i. In the event either party fails to comply with any provision of this Agreement ("Default"), which Default shall not have been cured within five (5) business days after receiving notice specifying such Default, then the non-defaulting party may immediately or any time thereafter terminate this Agreement upon written notice to the defaulting party.
 - ii. The Cable Company may terminate this Agreement by notice to the Owner if the Cable Company is unable to install, operate or maintain its local cable television system or otherwise provide the Service.
 - iii. This Agreement shall terminate if the Cable Company is properly denied the right to serve the Property by a court, by a public body or by a state agency, and such denial is not contested by the Cable Company or agents thereof, at the Cable Company's sole option.
 - iv. At the Cable Company's option in the event of any conveyance of the Property at a foreclosure sale or otherwise to or for the benefit of the Owner's creditors.
- b. If this Agreement is terminated for any reason, the Cable Company shall have the right, but not the obligation, to disconnect or remove its cable television system. The covenants and agreements set forth herein shall continue for the reasonable time following termination, and to the extent reasonably necessary for Cable Company to accomplish the disconnection or removal of its cable television system.
- c. In the event any portion of the cable television system operated, installed or maintained hereunder becomes damaged, vandalized or in a state of disrepair, Owner shall promptly notify the Cable Company in writing, and Cable Company shall diligently proceed to repair, replace or remove the defective equipment.

9. INDEMNIFICATION

Each party (sometimes hereinafter referred to as the "Indemnitor") hereby agrees to indemnify the other party (sometimes hereinafter referred to as the "Indemnitee"), against, and to hold the other harmless of and from any and all liability, loss, damage and expense, including, without limitation, reasonable counsel fees and costs which the Indemnitee may suffer or incur by reason of any breach of any warranty or representation made by the other party herein, or by reason of any action or proceeding asserted or instituted, arising from such breach. The Indemnitee shall give the Indemnitor hereunder prompt written notice of the institution of any action or the making of any claim which, if sustained, would result in the Indemnitee being entitled to indemnification hereunder, and the Indemnitee will cooperate with the Indemnitor in the defense and settlement of any such action or proceeding. Notwithstanding anything to the contrary in this Section 9, while it is the Cable Company's intent to operate its cable television system within generally acceptable technical standards, and on a twenty-four (24) hour basis, it is expressly understood that the Cable Company is not liable to the Owner for signal quality, nor for outages, for whatever duration or for whatsoever reason.

10. **SUCCESSORS**

This Agreement shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of the parties hereto. The parties agree that they will give prompt written notice of any such successor or assignee.

11. **NOTICES AND PAYMENTS**

Any and all payments, notices or other communications provided for herein shall be delivered at the addresses as first set forth above or at any other address which may be specified in writing by the parties hereto. All notices required to be given hereunder shall be given in writing, sent by certified mail, return receipt requested, and shall be deemed effective five (5) days after such mailing.

12. **GOVERNING LAW**

This Agreement shall be governed by the laws of the STATE OF FLORIDA as to interpretation, construction and performance.

13. **ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties and contains all the covenants made between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements between the parties, either oral or in writing, with respect to the subject matter hereof.

14. **AMENDMENTS**

This Agreement may be amended, changed or modified only by written amendment executed by the parties hereto. No waiver of any provision of this contract shall be valid unless in writing and signed by the party charged.

15. **GRANT OF EASEMENT**

By execution of the Agreement, Owner hereby grants to Cable Company and its successors and assigns an easement and right-of-way over, across, along and under the Property for the purpose of installing, constructing, reconstructing, repairing, replacing, operating, maintaining or removing cables, pedestals and related equipment upon and under the easement to provide cable television service to Residents of the Property. Cable Company shall have the further right to enter upon the adjacent lands of the Owner for access to the right-of-way and for all purposes in connection with providing cable television service to Residents. The Owner represents and warrants that it is the Owner of the Property and has the right to grant this easement. This easement shall inure to the benefit of and be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect so long as the right-of-way shall be utilized for the purposes for which this easement is granted.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives or officers on the day and year first written above.

CABLE COMPANY

WITNESS:

BY: _____

OWNER

GOLFWOOD HOMEOWNERS ASSOCIATION I AND II, INC.

WITNESS:

Sharon Goody

Mel Miller

MEL MILLER, PRESIDENT

EXHIBIT A

PROPERTY

(To Be Completed)

GOLFWOOD CONDOMINIUMS I AND II
20500 SAN SIMEON BLVD..
MIAMI, FLORIDA 33179

120 UNITS
AND ALL REAL ESTATE APPURTENANT THERETO

EXHIBIT B

COMPENSATION AND BILLING

(To Be Completed)

1. Bulk Basic Service:

a. \$ 9.25 per Unit X 120 units = \$ 1140.00 Per month*

• Plus applicable sales tax

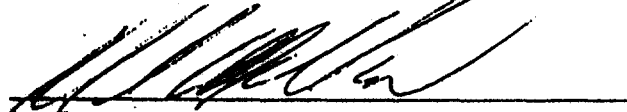
2. Pay Services:

- a. Owner agrees that Cable Company shall be responsible for individually contracting for Pay Services with each of the individual occupants/owners residing on the Property who desire said Pay Services.
- b. Owner further agrees that the Cable Company shall have the right to disconnect pay cable television service supplied to any Unit in the Property, if such Unit occupant/owner residing therein fails to timely render any required payment for Pay Services contracted pursuant to 2a. above.

AGREED AND ACCEPTED:

GOLFWOOD HOMEOWNERS ASSOCIATION I AND II, INC.

OWNER:


MEL MILLER, PRESIDENT

DATE:

2/20/91

COMPANY:

DATE: